

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
CUSTOMER NO. 22927

Appellants: Jay S. Walker, James A. Jorasch, Daniel Tedesco, Robert Tedesco
Application No.: 10/791,028
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Title: METHOD AND SYSTEM FOR MANAGING GAME CONFIRMATIONS

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Examiner: Julie K. Brocketti

APPEAL BRIEF

**BOARD OF PATENT APPEALS
AND INTERFERENCES**

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Commissioner for Patents
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Appellants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed September 25, 2007 (Part of Paper No./Mail Date 20070904), rejecting claims **1-8, 15 and 33-43**. This Appeal Brief is filed subsequent to a Notice of Appeal filed January 25, 2008.

TABLE OF CONTENTS

REAL PARTY IN INTEREST	3
RELATED APPEALS AND INTERFERENCES.....	4
STATUS OF CLAIMS	5
STATUS OF AMENDMENTS	6
SUMMARY OF CLAIMED SUBJECT MATTER	7
1. Independent Claim 1	7
2. Independent Claim 15	8
3. Independent Claim 33	9
4. Independent Claim 34	10
5. Independent Claim 41	10
GROUNDSC OF REJECTION TO BE REVIEWED ON APPEAL	12
ARGUMENTS.....	13
1. Form of Appeal Brief.....	13
2. 35 U.S.C. §112 Rejections.....	13
3. 35 U.S.C. §103(a) Rejections	16
3.1. Claims 1, 33, and 34	17
3.2. Claim 36.....	22
3.3. Claim 39.....	24
3.4. Claim 40.....	25
3.5. Claims 35, 37, 38 and 41	26
3.6. Claim 42.....	29
4. 35 U.S.C. §103(a) Rejections	30
4.1. Claims 3 and 4	30
4.2. Claim 15.....	32
CONCLUSION.....	35
APPENDIX A - CLAIMS INVOLVED IN THE APPEAL	35
APPENDIX B – EVIDENCE.....	41
APPENDIX C – RELATED PROCEEDINGS.....	42

REAL PARTY IN INTEREST

The present application is assigned to Walker Digital, LLC, Two High Ridge Road, Stamford, CT 06905.

RELATED APPEALS AND INTERFERENCES

No interferences or appeals are known to Appellants, Appellants' legal representative, or assignee that will directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims **1-8, 15 and 33-43** are pending in the present application and are rejected.

Claims **1-8, 15 and 33-43** are being appealed.

Claims **9-14 and 16-32** are cancelled.

STATUS OF AMENDMENTS

No amendments were filed subsequent to the Office Action mailed September 25, 2007, the rejections of which are being appealed herein.

SUMMARY OF CLAIMED SUBJECT MATTER

Concise explanations of the independent claims being appealed, and the dependent claims being specifically argued, are provided below. The summaries include sufficient information about the claimed subject matter so that an informed review of the Examiner's adverse determination of patentability can be made.

As required by 37 C.F.R. § 41.37(c)(1)(v), reference is made to the Specification and Drawings, as appropriate. Any such reference:

- (i) is by way of example of the claimed subject matter only;
- (ii) is to be considered as potentially useful in clarifying the particular subject matter of the particular independent claim being explained (and not other claims or "the invention" as a whole), unless explicitly stated otherwise; and
- (iii) is not to be considered as broadening or narrowing the scope of any recited term from its meaning to one of ordinary skill in the art, unless explicitly stated otherwise.

Of the claims being appealed, claims **1, 15, 33, 34, 41** are independent, and dependent claims **3, 4, 35-40** and **42-43** are specifically argued.

1. Independent Claim 1

In accordance with one or more embodiments, a method comprises *establishing a balance of funds for a player*. See, for example, Specification, pg. 86, lines 23-24.

The method further provides for *determining a wager amount required for a game*. See, for example, Specification, pg. 86, lines 28-29.

The method further provides for, *determining whether the wager amount required is greater than a predetermined amount*. See, for example, Specification, pg. 50, lines 10-20; Fig. 11.

The method further provides for, *displaying a confirmation message if the wager amount is greater than the predetermined amount*. See, for example, pg. 7, lines 4-5; pg. 17, line 27 – pg. 18, line 21; Figs. 11, 13A-13E; pg. 45, line 16; pg. 47, line 43; pg. 50, lines 10-20; pg. 51, lines 23-24; pg. 86, line 30 – pg. 87, line 2.

2. Independent Claim 15

In accordance with one or more embodiments, a method comprises *receiving a request to initiate play of a game at a gaming device*. See, for example, Specification, pg. 82, lines 20-21.

The method further provides for, *determining whether to present confirmation information to a player*. See, for example, Specification, pg. 85, lines 14-23; pg. 85, lines 30-32; pg. 87, lines 2-4; Fig. 11.

The method further provides for, *if confirmation information is to be presented to the player: determining confirmation information to present to the player, presenting the confirmation information to the player, receiving a signal indicating that the player confirms the confirmation information, decrementing a credit balance associated with the player; and initiating play of the game*. See, for example, Specification, pg. 87, lines 4-8; pg. 83, line 30 – pg. 84, line 4; pg. 83, lines 17-20.

The method further provides for, *in which determining whether to present confirmation information to the player comprises: determining a cost to play the game, and*

determining whether the cost to play the game is greater than a predetermined cost, and

in which the confirmation information includes an indication of the cost to play the game as a percentage of an available balance. See, for example, Specification, pg. 18, lines 5-16; pg. 92, line 30- pg. 93, line 4; Fig. 11; pg. 50, lines 10-20.

3. Independent Claim 33

In accordance with one or more embodiments, a computer readable medium storing instructions configured to direct a processor to perform a method comprising, *establishing a balance of funds for a player.* See, for example, Specification, pg. 86, lines 23-34.

The instructions stored on the computer readable medium are operable to direct the processor to perform *determining a wager amount required for a game.* See, for example, Specification, pg. 86, lines 28-29.

The instructions stored on the computer readable medium are operable to further direct the processor to perform *determining whether the wager amount required is greater than a predetermined amount.* See, for example, Specification, pg. 50, lines 10-20; Fig. 11.

The instructions stored on the computer readable medium are operable to further direct the processor to perform *displaying a confirmation message if the wager amount is greater than the predetermined amount.* See, for example, pg. 7, lines 4-5; pg. 17, line 27 – pg. 18, line 21; Figs. 11, 13A-13E; pg. 45, line 16; pg. 47, line 43; pg. 50, lines 10-20; pg. 51, lines 23-24; pg. 86, line 30 – pg. 87, line 2.

4. Independent Claim 34

In accordance with one or more embodiments, an apparatus comprises a processor and a computer readable medium in communication with the processor and storing instructions configured to direct the processor to *establish a balance of funds for a player*. See, for example, Specification, pg. 86, lines 23-34.

The program includes further instructions executable on the processor that are operable to *determine a wager amount required for a game*. See, for example, Specification, pg. 86, lines 28-29.

The program includes further instructions executable on the processor that are operable to *determine whether the wager amount required is greater than a predetermined amount*. See, for example, Specification, pg. 50, lines 10-20; Fig. 11.

The program includes further instructions executable on the processor that are operable to *display a confirmation message if the wager amount is greater than the predetermined amount*. See, for example, pg. 7, lines 4-5; pg. 17, line 27 – pg. 18, line 21; Figs. 11, 13A-13E; pg. 45, line 16; pg. 47, line 43; pg. 50, lines 10-20; pg. 51, lines 23-24; pg. 86, line 30 – pg. 87, line 2.

5. Independent Claim 41

In accordance with one or more embodiments, a gaming device comprises a processor and a computer readable medium in communication with the processor and for storing instructions to direct the processor to *determine a balance available for a player to wager*. See, for example, Specification, pg. 86, lines 23-34.

The program includes further instructions executable on the processor that are operable to *determine a wager amount required for a game*. See, for example, Specification, pg. 86, lines 28-29.

The program includes further instructions executable on the processor that are operable to *determine a ratio of the wager amount to the balance available*. See, for example, Specification, Figs. 10-11.

The program includes further instructions executable on the processor that are operable to *display a confirmation message if the determined ratio is greater than a predetermined ratio*. See, for example, pg. 7, lines 4-5; pg. 17, line 27 – pg. 18, line 21; Figs. 11, 13A-13E; pg. 45, line 16; pg. 47, line 43; pg. 50, lines 10-20; pg. 51, lines 23-24; pg. 86, line 30 – pg. 87, line 2.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims **15, 37, 39 and 40-43** stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims **1, 2, 5-8 and 33-41** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Betmaker.com (“Betmaker.com” herein).

Claims **3, 4 and 15** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Betmaker.com in view of Walker (6,077,163)(“Walker” herein).

ARGUMENTS

1. Form of Appeal Brief

In the arguments herein, limitations of the claims are indicated in *italics*, claim numbers are indicated in **bold**, and the references of record are indicated by underlining.

In separate arguments of patentability of different Groups of claims, Appellants have, where possible, referred to prior arguments to avoid undue repetition.

In the arguments below, Appellants may refer to:

The First Office Action, which was mailed on January 18, 2005 as part of Paper No./Mail Date 01132005;

The Final Office Action, which is the office action the rejections of which are being appealed herein, which was mailed on May 22, 2006 as part of Paper No./Mail Date 05162006;

The Response to the First Office Action, which was mailed by Appellants on July 5, 2005; and

The Office Action, which is the office action the rejections of which are being appealed herein, which was mailed on September 25, 2007 as part of Paper No./Mail Date 20070904.

2. 35 U.S.C. §112 Rejections

Claims **15, 37, 39 and 40-43** stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Appellants traverse these rejections.

It is well settled, as stated at MPEP §2163.02, that to satisfy the written description requirement, “an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon ‘reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter.’ *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)). ... **The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.**” (emphasis added).

The Examiner asserts that “The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. ... There is no support in the original specification to support the amended claims. No where in the specification is there any mention of the term ratio or how that ratio applies or would be used.” (Office Action, page 2).

Appellants commence to respond by noting that, in fact, contrary to the Examiner’s assertion, the term “ratio” is mentioned in the specification. Specifically, at paragraph [0378] where it is stated, “Probability of bonus round payouts being made (e.g., the ratio of treasure chests that award one or more coins compared to the number of chests that contain no coin awards)”. While not specifically relevant to the rejection at hand, Appellants note that the term “ratio”

is used in accordance with its definition well known to those skilled in the art and school children around the globe. Specifically, Webster's Dictionary defines a "ratio" as "the relation between two quantities which is expressed by dividing the magnitude of one by that of the other, *the ratio between selling price and cost price is 3 to 1*".

Proceeding to an examination of claim 15, Appellants are compelled to respectfully note that, contrary to the Examiner's assertions, the term "ratio", in fact, is nowhere mentioned. A careful reading of claim 15 yields the irrefutable conclusion that the term "ratio" is nowhere mentioned. In addition, an electronic search of claim 15, utilizing a PC running Microsoft Word™ under the Windows XP™ operating system, reveals that claim 15 is comprised of one hundred and thirty-three words, including eight hundred and fifty-six spaces (inclusive of spaces), not one of which is the term "ratio". Appellants do note, however, that claim 15 recites the term "percentage". Specifically, claim 15 recites, in part, "in which the confirmation information includes an indication of the cost to play the game as a percentage of an available balance". Appellants further respectfully point out that a percentage is commonly defined thusly:

percentage n. A fraction or ratio with 100 understood as the denominator; for example, 0.98 equals a **percentage** of 98.

It is therefore quite evident that all percentages are ratios and all ratios can be approximated or expressed exactly as percentages. Appellants therefore affirmatively assert that the use of the term "percentage" throughout the specification conveys with reasonable clarity to those skilled in the art that, as of

the filing date sought, that Appellants were in possession of the invention claimed in terms of a “ratio”.

With specific reference to claim 37, Appellants note that claim 37 recites, in part, “determining a ratio of the wager amount to the balance of funds ...”.

Appellants note that there is recited in the Specification, at paragraph [0386], “For example, the wager may be expressed as a percentage of the available balance ...” Elsewhere, with reference, generally, to claims 40-43, the Specification makes reference to a “half”. For example, there is recited in the Specification, at paragraph [0248], “In this example, the confirmation screen 1350 indicates that the wager is more than half of the total credit balance”. Appellants note that a “half” is defined as the ratio corresponding to “½”. It is therefore evident that the use of the term “half” in the Specification is clear evidence of the Appellants possession of the invention recited in claims 40-43 in terms of a “ratio”.

For all of these reasons, it is abundantly evident, that the rejection of claims 15, 37, 39 and 40-43 must be withdrawn.

3. 35 U.S.C. §103(a) Rejections

Claims 1, 2, 5-8, and 33-41 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Betmaker.com. Appellants traverse these rejections.

A reading of the rejections reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims and/or has incorrectly interpreted the teachings of the reference. Several limitations, for example, are simply not disclosed or suggested by the evidence of record. Accordingly, the Examiner has failed to show how any claim is anticipated by the cited reference.

The Examiner's Section 103(a) rejections based on the above grounds are argued separately for the following appealed claims and groups of appealed claims:

- Claims **1, 33, and 34;**
- Claim **36;**
- Claim **39;**
- Claim **40;**
- Claims **35, 37, 38 and 41;**
- Claim **42.**

3.1. Claims 1, 33, and 34

Appellants respectfully assert that the Examiner has failed to show how limitations of claims **1, 33, and 34** are taught or suggested by Betmaker.com. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2142. Accordingly, the Section 103(a) rejection of claims **1, 33 and 34** is improper, and must be withdrawn.

3.1.1. Betmaker.com fails to teach or suggest: *displaying a confirmation message if the wager amount is greater than the predetermined amount.*

Betmaker.com fails to teach or suggest the limitation of *displaying a confirmation message if the wager amount is greater than the predetermined amount.* Stated simply, Betmaker.com provides no evidence of (i) a “system will

not accept bets less than the minimum bet," or (ii) that a "computer system checks" anything.

The Examiner's response (Office Action, pg. 3) seems to indicate that the Examiner is misinterpreting a portion of Betmaker.com. Specifically, the Examiner asserts that Betmaker.com teaches that "For example, a confirmation message is displayed if the player meets the minimum bet (See Betmaker.com 'Buy-wagering')." The Examiner continues by asserting that "A computer betting system would not display a confirmation message to confirm a bet if the bet is improper or not allowed by the betting program. Consequently, once again it is inherent that the computer betting systems check to make sure a valid bet is placed prior to allowing a player to confirm the bet."

Appellants respectfully assert that, contrary to the Examiner's assertions, (1) Betmaker.com **does not** teach or otherwise suggest that "a confirmation message is displayed if the player meets the minimum bet", and (2) it is **not** inherent in Betmaker.com that the computer betting system checks to make sure a valid bet is placed prior to allowing a player to confirm the bet.

First, the portion of Betmaker.com "Buy-wagering" apparently referenced by the Examiner and most closely related to a "confirmation message" states:

Once you have chosen your bets and clicked "Place Bets," you will be taken to a confirmation page that looks like this:
* * *

The confirmation page lets you review and confirm your bet: it restates the match up, your ticket number, the point spread, the money line and the amount that you've wagered.

As is clearly evident, the only predicate for displaying the confirmation page is choosing a bet or bets and clicking on "Place Bets". As stated, after so doing,

“you **will** be taken to a confirmation page” (emphasis added). There is emphatically no teaching or suggestion that a player must meet a minimum bet in order to facilitate the display of the confirmation page. Quite the contrary, it is explicitly stated that “The confirmation page lets you review and confirm your bet.” Confirming one’s chosen bets serves to confirm that one’s intended choices are in accord with those entered prior to clicking “Place Bets”. The confirmation page simply indicates the amount wagered. Such a confirmation is not dependent upon, nor is there provided a teaching or suggestion of, a player meeting a minimum bet or any other condition for the bet.

Second, contrary to the Examiner’s assertion, it is **not** inherent that computer betting systems check to make sure a valid bet is placed prior to allowing a player to confirm the bet. As is clearly stated at MPEP §2112.IV, “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)”. In addition, "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

Appellants therefore respectfully assert that, contrary to the Examiner's assertion, it does not necessarily flow from the computer betting system of Betmaker.com that a check to make sure a valid bet is placed is performed prior to allowing a player to confirm the bet. To give but one example, it is entirely consistent with the disclosure of the confirmation page of Betmaker.com that the displayed data entry fields operate to assure that all necessary fields have received inputs and that the inputs are syntactically correct (e.g., no textual characters are entered in numeric only fields). Only after such validation has been performed might the inputted data be sent to the server where logical validation is performed (e.g., does a wagered amount meet established criteria, such as being greater than a predetermined amount).

As a result, it is quite possible that the computer betting system of Betmaker.com displays a confirmation message even if a bet is improper or not allowed by the betting program. By so doing, the system of Betmaker.com, would operate to reduce the incidence of unintended inputs by the player prior to any determination of the appropriateness of the player's wager.

As noted above, Betmaker.com clearly states that the confirmation page is displayed after a player chooses bets and clicks "Place Bets". It is further clear that the confirmation page allows the player to review and confirm the bet. As discussed above, Betmaker.com neither teaches nor suggests that displaying the confirmation page is predicated upon the wager amount being greater than a predetermined amount as claimed.

The Examiner argues that no confirmation page "would" be displayed to confirm an improper or not allowed bet, but has indicated no extrinsic or intrinsic evidence to support an assertion that this must be what is occurring in Betmaker.com. Such validation is not required in Betmaker.com prior to

displaying the confirmation page. It is possible that, if such validation takes place, it occurs after the player confirms the bet. It is therefore evident that pre-confirmation page validation (of anything) does not necessarily flow from the teachings of Betmaker.com.

In the Examiner's response (Office Action, pages 8-9) to Appellants' arguments, the Examiner asserts that "The Examiner notes that it is inherent in on-line wagering systems that a betting website will not process bets that do not meet certain requirements, i.e. some amount of money has been bet (the bet is greater than zero) or the player has bet at least the minimum bet required. This is the same for most websites with a confirmation page where you review your purchase before you hit pay. After you hit pay you get a[n] additional confirmation message or page called a receipt. Betmaker also provides you with a receipt as shown in pages 13-15 where the examples [s]how you that once a bet is placed an available balance and an amount at risk is shown."

In response, Appellants merely repeat the painfully simple fact, discussed in detail above, that, whether or not it is inherent in on-line wagering systems to not *process* bets that do not meet certain requirements, it is most emphatically not inherent in the system of Betmaker.com to display *a confirmation message if the wager amount is greater than the predetermined amount* as claimed. Appellants note the obvious fact that displaying a confirmation message is not the same as processing a bet and, in the instance of Betmaker.com, the two are quite entirely separate.

Accordingly, Appellants assert that the Examiner has failed to show how the above-quoted limitation of claims **1, 33 and 34** is anticipated by Betmaker.com. Appellants therefore respectfully request that the Examiner's Section 103(a) rejections of claims **1, 33 and 34** be withdrawn. Appellants further note that, as all

of claims **2 and 5-8** depend upon claim **1**, for the reasons discussed above, their rejections must likewise be withdrawn.

3.2. Claim 36

Appellants respectfully assert that the Examiner has failed to show how limitations of claim **36** are taught or suggested by Betmaker.com. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2142. Claim **36** is also believed patentable as depending upon patentable base claim **33**. (See Section **3.1.** above). Accordingly, the Section 103(a) rejection of claims **36** is improper, and should be withdrawn.

3.2.1. Betmaker.com fails to teach or suggest: *in which the confirmation message includes an indication of the wager amount compared to the balance of funds.*

The Examiner asserts (Office Action, pg. 4) that Betmaker.com discloses “that when a player makes a wager, the display reads the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation message includes an indication of the wager amount compared to the balance of funds”.

Appellants respectfully assert that the Examiner is in error when characterizing the cited teachings of Betmaker.com. Specifically, the “display” to which the Examiner refers is most emphatically not part of the disclosed confirmation page and, therefore, it is not correct to assert the “the confirmation

message includes an indication of the wager amount compared to the balance of funds”.

It appears that the Examiner is confusing the display described in Examples I and II with the confirmation page of Betmaker.com. Appellants note that neither Example I or II provides a visual example of a display related to the confirmation page showing a balance. With respect to Example I, it is merely stated that, after wagering \$130, “His balance now reads: \$70 available, \$130 at risk”. After the game is played, it is stated that “His balance now reads: \$300”. It is clear in the latter instance that, to the extent (if any) that the balance is displayed, it is not displayed on a confirmation page as the balance “reads” the stated amount after the placement of a wager and the playing of the game. In the former instance, there is no disclosure that the balance is included in the confirmation page. In fact, the example confirmation screens presented contain no balance information. Moreover, the example confirmation screens recite only the information described in the text recited above, specifically, “the match up, your ticket number, the point spread, the money line and the amount that you've wagered.” It is therefore clear that Betmaker.com does not disclose that the confirmation message includes an indication of the wager amount compared to the balance of funds as claimed.

Accordingly, Appellants assert that the Examiner has failed to show how the above-quoted limitation of claim **36** is taught or suggested by Betmaker.com. Appellants therefore respectfully request that the Examiner’s Section 103(a) rejection of claim **36** be withdrawn.

3.3. Claim 39

Appellants respectfully assert that the Examiner has failed to show how limitations of claim 39 are taught or suggested by Betmaker.com. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2142. Claim 39 is also believed patentable as depending upon patentable base claim 34. (See Section 3.1. above). Accordingly, the Section 103(a) rejection of claim 39 is improper, and should be withdrawn.

3.3.1. Betmaker.com fails to teach or suggest: *in which the predetermined amount corresponds to a predetermined ratio.*

The Examiner asserts (Office Action, pg. 4) that Betmaker.com discloses “The predetermined amount corresponds to a predetermined ratio … For example, the minimum wager for Internet wagering is \$6. That is a predetermined ratio of 6:1.”

Appellants respectfully assert that the Examiner is in error when characterizing the teachings of Betmaker.com. Specifically, “\$6” is not a ratio of anything. The Encyclopedia Britannica defines a ratio as: “Quotient of two values. The ratio of a to b can be written $a:b$ or as the fraction a/b . In either case, a is the antecedent and b the consequent. Ratios arise whenever comparisons are made. They are usually reduced to lowest terms for simplicity. Thus, a school with 1,000 students and 50 teachers has a student/teacher ratio of 20 to 1.” As is evident, “\$6” is a single dollar value, is therefore not a comparison between any two values, and is therefore not a ratio.

Furthermore, Appellants note that, as discussed above, claim **34**, upon which claim **39** depends, recites displaying a confirmation message if the wager amount is greater than the predetermined amount. As discussed above, Betmaker.com does not teach or suggest that the display of the confirmation page is in any way related to a wager amount, let alone a wager amount that is greater than a predetermined amount.

Accordingly, Appellants assert that the Examiner has failed to show how the above-quoted limitation of claim **39** is anticipated by Betmaker.com. Appellants therefore respectfully request that the Examiner's Section 103(a) rejections of claim **39** be withdrawn.

3.4. Claim 40

Appellants respectfully assert that the Examiner has failed to show how limitations of claim **40** are taught or suggested by Betmaker.com. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2142. Claim **40** is also believed patentable as depending upon patentable base claim **34**. (See Section **3.1.** above). Accordingly, the Section 103(a) rejection of claim **40** is improper, and should be withdrawn.

3.4.1. Betmaker.com fails to teach or suggest: *in which the predetermined ratio is not less than one half.*

The Examiner asserts (Final Office Action, pg. 4) that Betmaker.com discloses “That is a predetermined ratio of 6:1. Therefore, the predetermined ratio

is not less than one half.” As noted above, Appellants respectfully assert that the Examiner is in error when asserting that “\$6” is a ratio. As it is therefore evident that Betmaker.com nowhere discloses a ratio, there is further no teaching or suggestion of a particular ratio, such as the claimed one half. For the reasons discussed above with reference to claim 39, Appellants respectfully request that the Examiner’s Section 103(a) rejections of claim 40 be withdrawn.

3.5. Claims 35, 37, 38 and 41

Appellants respectfully assert that the Examiner has failed to show how the limitations of claims **35, 37, 38 and 41** are taught or suggested by Betmaker.com. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2142. Claims **35, 37, 38 and 41** are also believed patentable as depending upon a patentable base claim. (See Section 2.1. above). Accordingly, the Section 103(a) rejections of claims **35, 37, 38 and 41** are improper, and should be withdrawn.

3.5.1. Betmaker.com fails to teach or suggest: *in which the confirmation message includes a representation of the wager amount as a percentage of the balance of funds.*

With respect to claim 35, the Examiner asserts (Office Action, pg. 5) that Betmaker.com discloses “that when a player makes a wager, the display reads the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation

page clearly indicates the cost to play the game, i.e. amount at risk, and the available balance. At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to display the cost/wager to play the game as a percentage/ratio of an available balance because Applicant has not disclosed that the display of a percentage/ratio provides an advantage is used for a particular purpose, or solves a stated problem”

Appellants first note that the specification clearly describes a particular purpose for which the display of the wager expressed as a percentage of the available balance may be used. (see, for example, paragraph [0386]). Secondly, Appellants respectfully submit that the Examiner is once again confusing the disclosures of Examples I & II with the confirmation page of Betmaker.com. As discussed above in section 3.2.1, Betmaker.com does not disclose a display related to the confirmation page that “reads the available balance left after the bet”. Furthermore, as discussed above, the confirmation page most emphatically does not indicate the available balance. It is therefore evident that, contrary to the Examiner’s assertions, Betmaker.com does not teach that the confirmation message includes a representation of the wager amount as a percentage of the balance of funds as claimed.

Accordingly, Appellants assert that the Examiner has failed to show how the above-quoted limitation of claim 35 is taught or suggested by Betmaker.com. Appellants therefore respectfully request that the Examiner’s Section 103(a) rejection of claim 35 be withdrawn.

3.5.2. Betmaker.com fails to provide a motivation for the feature of:
displaying the available balance and the wager.

With respect to claims **35, 37, 38 and 41**, the Examiner asserted that “One of ordinary skill in the art, furthermore, would have expected Applicant’s invention to perform equally well with the display of the available balance and the amount of money at risk because the same information is being communicated to the player in order for them to confirm the bet. Therefore, it would have been an obvious matter of design choice to modify Betmaker.com to obtain the invention as claimed.”

Appellants respectfully submit that the Examiner is in error when characterizing the disclosure of Betmaker.com. As discussed above, Betmaker.com does not, contrary to the Examiner’s assertion, disclose communicating the available balance and the amount of money at risk to the player in order for them to confirm the bet. It would therefore not be an obvious matter of design choice to modify Betmaker.com to obtain the invention as specified in claims **35, 37, 38 and 41**. It is therefore evident that, contrary to the Examiner’s assertions, Betmaker.com does not teach any motivation to modify the teachings of Betmaker.com so as to teach or suggest the limitations of claims **35, 37, 38 and 41**.

Accordingly, Appellants assert that the Examiner has failed to show how the limitations of claims **35, 37, 38 and 41** are taught or suggested by Betmaker.com. Appellants therefore respectfully request that the Examiner’s Section 103(a) rejections of claims **35, 37, 38 and 41** be withdrawn.

3.6. Claim 42

Appellants further note that while the Examiner asserts that “it would have been an obvious matter of design choice to modify Betmaker.com to obtain the invention as claimed”, the Examiner nowhere states (Excepting the “Disposition of Claims” section of the Response to the First Office Action) that claim **42** is rejected. Regardless, Claims **42** is believed patentable as depending upon a patentable base claim, specifically, claim **41**. Accordingly, the Section 103(a) rejection of claim **42** is improper, and should be withdrawn.

4. 35 U.S.C. §103(a) Rejections

Claims **3, 4 and 15** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Betmaker.com in view of Walker. Appellants traverse these rejections.

A reading of the rejections reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims and/or has incorrectly interpreted the teachings of the reference. Several limitations, for example, are simply not disclosed or suggested by the evidence of record. Accordingly, the Examiner has failed to show how any claim is unpatentable over the cited reference.

The Examiner's Section 103(a) rejections based on the above grounds are argued separately for the following appealed claims and groups of appealed claims:

- Claims **3 and 4**;
- Claim **15**
- Claim **43**.

4.1. Claims 3 and 4

Appellants respectfully assert that the Examiner has failed to show how claims **3 and 4** are unpatentable over Betmaker.com in view of Walker (6,077,163). “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)”; MPEP §2142. Claims **3 and 4** are

believed patentable as depending upon patentable base claim 1. (See Section 3.1. above). Accordingly, the Section 103(a) rejection of claims **3 and 4** are improper, and should be withdrawn.

4.2. Claim 15

Appellants respectfully assert that the Examiner has failed to show how claim 15 is unpatentable over Betmaker.com in view of Walker (6,077,163). “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)”; MPEP §2142.

4.2.1. The combination of Betmaker.com and Walker, such a combination neither suggested nor deemed appropriate, fails to teach or suggest *in which the confirmation information includes an indication of the cost to play the game as a percentage of an available balance*.

Appellants respectfully assert that Betmaker.com and Walker each fail to teach or suggest the limitation that *the confirmation information includes an indication of the cost to play the game as a percentage of an available balance*.

Appellants respectfully reassert, for the reasons discussed above with reference to claims 35-42 (**sections 3.1-3.2**), that Betmaker.com and Walker do not individually teach or suggest *indicating the cost to play a game as a percentage of an available balance*, as recited in independent Claim 15. As a result, the combination of the teachings of Betmaker.com and Walker, such a combination neither suggested nor deemed appropriate, likewise fails to teach or otherwise suggest, *indicating the cost to play a game as a percentage of an available balance*. In particular, as discussed above with respect to Claim 36, Betmaker.com does not teach or suggest an indication of a wager amount compared to the balance, and thus cannot suggest such an indication as a percentage of a balance.

Accordingly, Appellants assert that the Examiner has failed to show how the limitations of claim 15 are taught or suggested by Betmaker.com and Walker. Appellants therefore respectfully request that the Examiner's Section 103(a) rejection of claim 15 be withdrawn.

4.3 Claim 43

Appellants further note that the Examiner's above recited reference to claim **43** ("This limitation is addressed in the rejection above as well as the rejections of new claims 35-43") is the only reference to claim **43** (Excepting the "Disposition of Claims" section of the Response to the First Office Action). As the Examiner nowhere formally rejects claim **43**, Appellants are unable to effectively respond to any grounds for rejection of claim **43**. Regardless, Claims **43** is believed patentable as depending upon a patentable base claim, specifically, claim **41**. Accordingly, the Section 103(a) rejection of claim **43** is improper, and should be withdrawn.

CONCLUSION

Thus, the Examiner's rejections of the pending claims are improper at least because the Examiner has not provided a proper legal basis for rejecting any claim. Therefore, Appellants respectfully request that the Examiner's rejections be withdrawn.

If any issues remain, or if there are any further suggestions for expediting allowance of the present application, please contact Jeffrey R. Ambroziak, at telephone number 203-461-7317 or via electronic mail at jambroziak@walkerdigital.com.

Appellants believe that this Appeal Brief is filed within the statutory time within which to respond and that no extension of time or other fee is required. However, if an additional fee should be due, please charge such fees to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Appeal Brief, or credit any overpayment to Deposit Account No. 50-0271.

March 25, 2008

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APPENDIX A - CLAIMS INVOLVED IN THE APPEAL

1. A method comprising:
establishing a balance of funds for a player;
determining a wager amount required for a game;
determining whether the wager amount required is greater than a predetermined amount; and
displaying a confirmation message if the wager amount is greater than the predetermined amount.
2. The method of claim 1, in which the game comprises a plurality of plays.
3. The method of claim 1, in which the game comprises a flat rate session.
4. The method of claim 1, in which the game comprises a prepaid session.
5. The method of claim 1, in which the wager amount required corresponds to a plurality of plays.
6. The method of claim 1, in which the wager amount required corresponds to a predetermined period of time.
7. The method of claim 1, in which the confirmation message comprises a confirmation screen.
8. The method of claim 7, in which the confirmation screen comprises at least one selectable location.

15. A method comprising:
 - receiving a request to initiate play of a game at a gaming device;
 - determining whether to present confirmation information to a player; and
 - if confirmation information is to be presented to the player:
 - determining confirmation information to present to the player;
 - presenting the confirmation information to the player;
 - receiving a signal indicating that the player confirms the confirmation information;
 - decrementing a credit balance associated with the player; and
 - initiating play of the game,
 - in which determining whether to present confirmation information to the player comprises:
 - determining a cost to play the game; and
 - determining whether the cost to play the game is greater than a predetermined cost, and
 - in which the confirmation information includes an indication of the cost to play the game as a percentage of an available balance.

33. A computer readable medium storing instructions configured to direct a processor to perform a method comprising:
 - establishing a balance of funds for a player;
 - determining a wager amount required for a game;
 - determining whether the wager amount required is greater than a predetermined amount; and

displaying a confirmation message if the wager amount is greater than the predetermined amount.

34. An apparatus comprising:
a processor; and
a computer readable medium in communication with the processor and storing instructions configured to direct the processor to perform a method comprising:
establishing a balance of funds for a player;
determining a wager amount required for a game;
determining whether the wager amount required is greater than a predetermined amount; and
displaying a confirmation message if the wager amount is greater than the predetermined amount.

35. The apparatus of claim 34, in which the confirmation message includes a representation of the wager amount as a percentage of the balance of funds.

36. The apparatus of claim 34, in which the confirmation message includes an indication of the wager amount compared to the balance of funds.

37. The apparatus of claim 34, further comprising:
determining a ratio of the wager amount to the balance of funds.

38. The apparatus of claim 34, in which determining whether the wager amount required is greater than a predetermined amount comprises:
determining an indication of the wager amount as a percentage of the balance of funds.

39. The apparatus of claim 34, in which the predetermined amount corresponds to a predetermined ratio.

40. The apparatus of claim 39, in which the predetermined ratio is not less than one half.

41. A gaming device comprising:
 - a processor; and
 - a computer readable medium in communication with the processor and storing instructions configured to direct the processor to perform a method comprising:
 - determining a balance available for a player to wager;
 - determining a wager amount required for a game;
 - determining a ratio of the wager amount to the balance available; and
 - displaying a confirmation message if the determined ratio is greater than a predetermined ratio.
42. The gaming device of claim 41, in which the confirmation message includes an indication of the determined ratio.
43. The gaming device of claim 41, in which the predetermined ratio is not less than one half.

APPENDIX B – EVIDENCE

<NONE>

APPENDIX C – RELATED PROCEEDINGS

<NONE>